IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.10.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE N.PAUL VASANTHAKUMAR

W.P. NO. 22170 OF 2007
AND
M.P. NO. 1 OF 2007

M/s.Canara Bank
Asset Recovery Management Branch
Spencer Tower-II, Anna Salai
Chennai 600 002. .. Petitioner

- Vs -

1. M/s.Coromandel Indag Products
   No.5A, Ram Mansions, 5th Floor
   Chennai 600 008, rep. by
   its Managing Director
   Mr. Arun R.Fredrick

2. M/s.Indag Finance and Guarantee Co. Ltd.
   No.5A, Ram Mansions, 5th Floor
   Chennai 600 008, rep. by
   its Managing Director
   Mr. Arun R.Fredrick

3. The Debt Recovery Appellate Tribunal
   4th Floor, Indian Bank Circle Office
   No.55, Ethiraj Salai
   Chennai 600 008, rep. by its Chairperson .. Respondents

Writ Petition filed for the issuance of a writ of certiorari calling for the records of the third respondent, relating to his orders dated 28.05.2007 passed in M.A. No.32 of 2007 confirming the order dated 27.04.2007 passed in M.A. No.32 of 2007 in appeal filed under In. No.121 of 2007 and to quash the same and consequently uphold and confirm the order dated 30.11.2005 passed in O.A. No.17 of 1996 by the DRT-I, Chennai as stated therein.

For Petitioner : Mr. R.Umasuthan

For Respondents : Mr. T.R.Mani, SC, for
Mr. R.M.Mohan for RR-1 & 2

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ORDER

S.J.MUKHOPADHAYA, J.

This writ petition has been preferred by the petitioner, M/s.Canara Bank (hereinafter referred to as the 'Bank') against order dated 28th May, 2007, passed by Debts Recovery Appellate Tribunal, Chennai, (hereinafter referred to as 'DRAT') in M.A. No.32/07, whereby and whereunder earlier order dated 27th April, 2007, passed in the said appeal was affirmed.

By order dated 27th April, 2007, DRAT extended the time as was agreed to under the compromise memo, till the amount is received from the auction purchaser and adjusted towards liability of the respondent-borrower.

2. The 1st respondent-M/s.Coromandal Indag Products, (hereinafter referred to as the 'Company') was granted various credit facilities by the bank since 1983 onwards. Having failed to repay such amounts, the bank filed a suit, C.S. No.970/95 against the 1st respondent company and 5 others, which, on transfer, was renumbered as T.A. No.422/97 before the Debts Recovery Tribunal, Chennai, (hereinafter referred to as 'DRT'). Another O.A. No.17/96 was filed by bank against the 1st respondent company and 11 others before DRT. The bank filed an application, I.A. No.2735/00 before DRT in O.A. No.17/96 to sell "Spurtank Road Property". One of the respondent, Arun R.Fredrick, filed affidavit in the suit stating that he had no objection for interim sale, which was also accepted by the 1st respondent company. On 9th Aug., 2001, DRT passed order in I.A. No.2735/07 permitting sale of the property. Interim recovery certificate No.167/01 was issued on 13.12.01 for sale of Spurtank Road Property. It was sold for Rs.6.25 Crores. Another property of the first respondent company was sold by the bank for Rs.40 lakhs through DRT in 2002. Finally the parties agreed to compromise the matter.

3. A joint memo of compromise was filed in O.A. No.17/96 and T.A. No.422/97 on 21st Oct., 2005, in which both the parties agreed for full and final settlement for Rs.10.75 Crores. The 1st respondent company having already paid Rs.6.53 Crores, agreed to pay the remaining Rs.4.22 Crores by sale of the properties of the 1st respondent company.

The DRT, Chennai, in view of the compromise petition, after hearing the parties, passed a consent decree on 30th Nov., 2005, relevant portion of which is quoted hereunder :-

> "5. Therefore, the Chief Manager of the Canara Bank (plaintiff bank), the Managing Director of the Coromandel Indag Products India Ltd. (the D-1) and Director of the Indag Finance and Guarantee Company Limited (the D-9) have signed the memo of compromise for passing consent decree. The compromise seems to be legally in order and it can be acted upon between the signatories of the compromise. Therefore, a consent decree order is passed with following terms and conditions :-
>
> a) The present OA stands decreed for Rs.4,35,00,000/= payable by D-1 and D-9 by sale of the property of the D-1 company. This amount has to be paid within 6 months from the date of receipt of copy of the consent decree order, failing which, the applicant bank shall be entitled to obtain a recovery certificate for full claim amount of Rs.34,01,97,764.69p (Rupees Thirty

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Four Crores One Lakh Ninety Seven Thousand Seven Hundred and Sixty Four and paise sixty nine only) against the D-1 and D-9 who are signatories to the present compromise.

b) It is further made clear that in case compromise is materialised and full amount as agreed in the compromise is realised, then the present OA shall equally stand dismissed against rest of the defendants, i.e., D-2 to d-8 also, and the individual guarantee/corporate guarantee furnished, if any, by them shall stand released and the mortgage created, if any, by them to secure the present loan shall stand discharged by recording full satisfaction of the compromise amount, i.e., 4,35,00,000/= if the amount is paid within 6 months from the date of receipt of copy of the consent decree order.

c) Notwithstanding the above, in case the D-1 and D-9 commits default in making payment of the aforesaid compromise amount within the stipulated period by making sale of the assets of the D-1 company or otherwise agreed by the bank for further extension of time for making payment or further extended by this tribunal on the principle of natural justice, then the bank is entitled to obtain recovery certificate for the entire OA claim amount against D-1 and D-9. However, the present OA shall stand re-opened to be proved on merits by the bank against the loan liability of D-2 to D-8 and it shall stand revived and these defendants, viz., D-2 to D-8 (who are not signatories of the present compromise) shall however be at liberty to contest the case on merit to defend their case by producing evidence. The bank would also be required to prove its case on merits for fixing the loan liability against D-2 and D-8. As it is a settled legal position, the loan liability of the guarantors is co-extensive with that of the principal borrower, i.e., D-1 company and proper recovery certificate can be issued against the guarantor if the bank has successfully proved its OA claim against the guarantors/defendants 2 to 8."

4. Admittedly, the 1st respondent company could not pay the rest of the dues of Rs.4.22 Crores as per the decree. This time, the bank took steps u/s 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as the 'SARFAESI Act') and issued notice on 23rd Aug., 2006, and on receipt of reply, proceeded to take steps u/s 13 (4) of the SARFAESI Act for auction sale of the property, which was the schedule property under the compromise decree. The 1st respondent company having received the letter of bank dated 4th Oct., 2006, moved before the DRT on 5th Oct., 2006, in M.A. Nos. 169 & 170/06 for extension of time as was allowed under the compromise decree by the DRT and to direct the bank to sell the property of 1st respondent company through court auction. The bank appeared and filed counter affidavit in October, 2006, opposing the

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prayer for extension of time. Grounds were taken that after the compromise decree passed by DRT, it had become functus officio and, thereby, cannot extend the time and the terms of compromise or settlement arrived between the parties under the compromise decree cannot be altered by DRT. The DRT, vide its order dated 29th Jan., 2007, having noticed such submission and giving reference to some of the case laws, dismissed both the miscellaneous applications for extension of time. However, the said order was altered by DRAT by impugned order dated 27th April, 2007, passed in M.A. No.32/07 and I.A. No.121/07. Having noticed the submission and the fact that during the pendency of the petition before the DRT, property was auction sold on 8th March, 2007 for Rs.4.60 Crores and part payment (50%) have been received by the bank from the auction purchaser, DRAT extended the time as was allowed to in the compromise decree till the rest of the amount is received from the auction purchaser and adjusted towards the liability of the 1st respondent company.

Pursuant to an application filed by the bank, after hearing, the DRAT, by impugned order dated 28th May, 2007, refused to review its earlier order, dated 27th April, 2007, and affirmed the said order.

5. Learned counsel for the bank submitted that appeal was not maintainable against a compromise decree and, therefore, the Appellate Tribunal had no jurisdiction to extend the period. Further, according to him, a compromise decree cannot be interfered with or modified by Court unless the parties agree to the same. The bank never agreed for extension of time nor agreed to alter such terms of compromise decree.

On the other hand, according to counsel for the 1st respondent company, the Court had inherent power to extend such time u/s 148 of the Code of Civil Procedure.

6. Admittedly, no appeal was preferred by any of the party against the compromise decree dated 30th Nov., 2005. Therefore, it is not necessary to decide the question whether appeal was maintainable against such compromise decree or not. It is settled law that no appeal is maintainable against a compromise decree and for that one may refer Supreme Court decision in Gupta Steel Industries - Vs - Jolly Steel Industries Pvt. Ltd. reported in (1996) 11 SCC 678..

7. The only question that arise for determination in this case is whether the Tribunal or the Appellate Tribunal were competent to extend the time for depositing the agreed amount and whether such extension will amount to alteration of the compromise decree.

8. In this regard, law is well settled. In the case of Smt. Periyakkal - Vs - Smt. Dakshyani reported in AIR 1983 (2) SC 428., the Supreme Court held that on mere asking for extension of time it should not be extended ordinarily and observed as follows :-

> "4. ..... The parties, however, entered into a compromise and invited the Court to make an order in terms of the compromise, which the Court did. The time for deposit stipulated by the parties became the time allowed by the Court and this gave the Court the jurisdiction to extend the time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest

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injustice. True, the Court would not rewrite a contract between the parties but the Court would relieve against a forfeiture clause; And, where the contract of the parties has merged in the order of the Court, the Court's freedom to act to further the ends of justice would surely not stand curtailed."

In the case of Salem Advocates Bar Association, Tamil Nadu - Vs - Union of India reported in (2005) 6 SCC 344., having noticed the amended Act 46 of 1999 and Section 148 of the Code of Civil Procedure, the Supreme Court held that extension of time beyond 30 days is permissible if sufficient cause exists.

In one of the case of State Bank of India - Vs - Vijaykumar reported in 2007 (4)MLJ 117 (SC), while dealing with a case under the Recovery of Debts due to Banks and Financial Institutions Act, it was noticed that a compromise was reached between the parties in the Lok Adalat setting out the terms of settlement with failure clause for default. In the said case, entire payment was made subsequently after delay of more than three months along with interest for default period. The writ petition, as was preferred by debtor, the difficulties were indicated in making timely payment and having appreciated the difficulties, the High Court directed the bank to accept the amount with interest at the rate of 10.4%. In this background, the Supreme Court dismissed the appeal as was preferred by the bank.

9. In the present case, at clause (c) of paragraph-4 of the compromise decree, it was agreed upon that in case of default committed by 1st and 9th defendants (respondents herein) in making payment of compromise amount within the time by making sale of assets of the 1st respondent company, the bank is entitled to obtain recovery certificate for claim amount against defendants 1 and 9; but time so stipulated was not final, as option was left with the bank for further extension of time for making payment under the said clause (c). In the same clause (c), the Tribunal was also authorised to extend the time on the principles of natural justice. Therefore, it will be evident that time was not the essence of the decree.

10. At paragraph-3 of the compromise decree, it was agreed upon by both the parties that for raising the balance amount due under the compromise, the property of the 1st defendant company may be sold. For such sale, two options were left open to the parties (i) court auction; and (ii) private sale.

So far as sale by court auction is concerned, it could be done only at the instance of the decree holder-bank. For such court auction sale, to fetch the amount within the prescribed period of six months, it was the duty of the bank to approach the DRT for auction sale of the property of the 1st defendant. If the bank intended to resort to the other mode, i.e., private sale, such procedure could have been followed only after returning the original sale deed and other documents of the 1st defendant's property to the said defendant (1st respondent herein), which were in the custody of the bank.

It is not the case of the bank that they intended to sell the property by court auction, but the defendants (respondents herein) obstructed such sale. There is nothing on the record to suggest that the bank requested the defendants to take back the original sale deed and other documents in its custody to enable the owner (1st defendant - 1st respondent herein) for

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private sale.

On the other hand, from the record it will be evident that ultimately the bank took recourse to Section 13 (4) of SARFAESI Act and auction sold the property in question recently, as noticed by DRAT, Chennai, and has already received part payment of Rs.2.5 Crores out of Rs.4.6 Crores from the auction purchaser. It is also informed that another sum of Rs.1 Crore has been paid by the auction purchaser to the bank, though no specific averment in this regard has been made by the bank.

11. We have already noticed clause (c) of paragraph-4 of the compromise decree wherein it was agreed upon that the bank may extend the time further for making payment and that the Tribunal, on the principles of natural justice, can also extend such time. Thus it will be evident that the Tribunal was not only competent to extend the period for depositing the amount, time being not the essence of the compromise decree, but there were reasonable grounds shown by the defendants (respondents herein) for extension of such time.

12. In the aforesaid circumstances, if DRAT has extended the time for depositing the amount and auction sale has already taken place for an amount more than the decreetal amount, the order passed by DRAT requires no interference. There being no merit, the writ petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. But there shall be no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

GLN

To
1. The Registrar
Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
No.55, Ethiraj Salai, Chennai 600 008.

2. M/s.Canara Bank
Asset Recovery Management Branch
Spencer Tower-II, Anna Salai
Chennai 600 002.

+ 1 CC To Mr.R.Mohan, Advocate SR NO.61823

+ 2 CCs To Mr.R.Umasudan, Advocate SR NO.61935

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